

# Committee on Resources

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## Written Statement

**BY: Carlos Romero- Barceló**

**Governor of Puerto Rico 1977-1985**

Mr. Chairman, thank you for inviting me to testify. With your permission I would like to submit my written statement for the record and present a brief summary at this time.

Mr. Chairman, the stated purpose of this hearing is to consider the Report of the President's Task Force on Puerto Rico's Status. In my view the report accurately states federal law governing the current status of Puerto Rico, as well as the options for an ultimate political status recognized under federal law as fully democratic, permanent, and not subject to the power of Congress over a territory of the United States.

Congress now should move forward with legislation to implement the recommendations of the report in the manner it deems necessary and proper. It is my hope the Committee will be able to take up the Fortuno-Serrano bill (H.R. 4867) for consideration.

Having said that, what is left for me is to respond to the desperate attempts being made to distract and confuse the public and the Congress about the Task Force report.

In this respect, my colleague at the witness table today, former governor Hernandez Colon, did us all a service by attacking the Task Force report in a series of essays defending the commonwealth party's doctrine of separate nationhood within the American federal union.

To pierce through the murky haze of commonwealth party ideology and semantics, Congress really needs to understand what the current Governor and leaders of his party are actually saying:

- There is no territorial status under the U.S. Constitution, The constitution merely grants Congress the power to govern a territory.
- The power of Congress to govern territories is conferred by the territorial clause, in Article IV, Section 3 but they allege that Congress also can govern territories outside the scope of the territorial clause, as if that provision were not there, or were meaningless.
- That Congress can allegedly establish territorial governments by federal statute and then enter into agreements or "compacts" with those governments in which congress irrevocably cedes to the territorial government, the sovereign powers conferred to Congress by the U.S. Constitution.
- That such agreements allegedly become part of the federal constitution itself, and place the territory, the local constitution, the operations of the commonwealth government and the compact beyond the reach of a future Congress.
- That Federal law thereafter can allegedly be made applicable to the territory, only if the territory has consented in the compact, or if the territory subsequently gives its consent.
- That the Northwest Ordinance model of territorial incorporation and admission to the union allegedly establishes the precedent for a compact to establish a permanent political union under the U.S. Constitution with a territory, that will have the status of a sovereign nation-state.
- That allegedly all powers retained by the federal government under such a compact are limited to those delegated by the compact, and that all powers not delegated to the federal government, are reserved to the territorial nation-state.
- That such a compact was allegedly created in 1952 upon adoption of a local constitution approved by Congress, and therefore, Puerto Rico is allegedly no longer a territory.
- That alternatively, if the 1953 constitution did not perfect Puerto Rico's non-territory status, there is no need to make the more difficult choice between statehood and separate nationhood, because Congress still allegedly has the option of entering a permanent non-territory compact with the

“nation” of Puerto Rico.

- Under the alleged “compact” the commonwealth advocates promise the people that the local government could allegedly conduct its own foreign policy and trade relations with the international community, and the U.S. would guarantee U.S. citizenship and defend the “commonwealth” in perpetuity, in a relationship where there would be dual national citizenship and first allegiance to Puerto Rico.

I could go on, but you get the point. The commonwealth party leaders are talking about a confederation with a local power of nullification. The bilateral compact they espouse is based on a legal theory under which, the allocation of powers under the Constitution to govern territories, is changed permanently by an agreement approved by statute, without going through the amendment process under Article V of our Constitution.

No member of this Committee would ever vote for such a status formula because it is unconstitutional and legally flawed. Even if it were legally feasible, it will never be accepted by Congress as a matter of federal policy. Indeed, in one form or another, it has been presented to Congress over 10 times in the last fifty years, and it has always been ignored or rejected by Congress. In 1998 it was voted down by this Committee.

Congress will never create a nation-within-a-nation; a separatist regime exempt from supremacy of federal law; with U.S. citizenship but divided allegiance; with U.S. protection, but separate foreign relations powers; with federal subsidies but exemption from federal taxation; with separatist rights instead of equal rights. In other words, confederacy instead of federalism that is - Apartheid.

That is not the solution to the current undemocratic status under which the national law which apply in Puerto Rico are made by a Congress in which the U.S. citizens of the territory are not represented. The solution to that problem is statehood or separate nationhood, not separate nationhood within the American political union.

Yet, the Governor and the commonwealth party leadership endorse a bill that has been introduced in Congress to authorize a constitutional convention, in order that the commonwealth party may present its failed status formula to Congress again. This time, at the invitation of Congress. But Congress will not pass that bill, because it is as flawed as the “bilateral compact” allegation of the commonwealth party is.

The brazen assertions of “commonwealth” advocates do not merit, but still require rebuttal. Thus, it must be repeated here that if Congress could, by statute, or agreement approved by statute, permanently enjoin one or all three branches of the federal government from exercising the powers conferred to it by the U.S. Constitution; that would effectively mean that Congress has the power to amend the Constitution by statute. And that is absurd!

It is a maxim of constitutional interpretation that no provision is without a meaning and purpose. This maxim negates the suggestion that the territorial clause was not necessary, because an alleged inherent power of Congress to govern territories not within a state, is implied.

As for the Northwest Ordinance, Clause 14 of that seminal instrument of territorial policy does employ language of compact, but that applies only to the promise of incorporation and admission to statehood, not to territorial government. However, even under the Northwest Ordinance model, incorporation remains a political question, and a statutory “compact” for admission to the union is a promise that can not be enforced. It is a promise kept by Congress when determined to be in the national interest.

Enactment of the Northwest Ordinance by Congress did not make its articles of incorporation part of the U.S. Constitution, and language in early legal rulings cited by Governor Hernandez Colon, to suggest elevation of the compact to constitutional equivalence, has been overtaken by later Supreme Court rulings. Clause 12 of the Northwest Ordinance referred to territorial governments as “temporary”, by their constitutional and political nature, not parties to the articles of compact. And even the articles of compact, were subject to alteration by amendments to the Articles of Confederation and “all acts and ordinances” of Congress.

In short, Governor Hernandez Colon and the leadership of his party are fabricating a revisionist theory of the constitutional nature of the Commonwealth of Puerto Rico, in a desperate last stand against the onslaught of historical truth and legal reason embodied in the Task Force report.

He cites court rulings, concerning vesting of property rights and vested legal rights under executed contracts between private parties and the federal government, as if these cases were legal precedents for vesting of political rights in the body politic of a territory, on the statutory policy question of political status.

The commonwealth advocates claim that the U.S. Constitution gives Congress “flexibility” in its governing relationship with territories, whether it is with uninhabited territory under the territorial clause, or under bilateral compacts with Puerto Rico, alleged to be a nation in union with the U.S., rather than a state.

Congress has flexibility in territorial relations only because the political status of territories is defined by statutes, and statutes can always be amended or repealed. In addition, since the U.S. Constitution does not apply of its own force in territories, Congress has flexibility to limit the rights and benefits extended to U.S. citizens in a territory, who are subject to the laws of the national government in which they are not represented.

Even if Congress by statute granted greater powers of local autonomy, it would be a statutory policy that a later Congress could alter or end. That is why commonwealth can not be converted from a non-permanent form of local government into a permanent status. Permanent disenfranchisement and the present undemocratic status under federal supremacy is not a solution, and there is no substitute form of consent that can ever make the U.S. citizens of Puerto Rico whole, for the lack of equal voting rights and voting representation in Congress.

The former Governor and his party’s leadership accuse the U.S. Department of Justice under Attorney General Thornburgh of reversing sympathetic interpretation of “mutual consent” provisions in instruments of federal territorial policy. But it was under Attorney General Reno that the U.S. Department of Justice confirmed that such provisions are unenforceable, and were being used in the territories in a way that was “illusory” and “deceptive”.

Those two words pretty much sum up what needs to be said about the local commonwealth party attacks on the Task Force report, as well as the five decades of “enhanced commonwealth” ideological indoctrination, perpetrated on the U.S. citizens of Puerto Rico by the commonwealth party.

That former Governor Hernandez Colon, and his party’s leaders, are using illusory and deceptive legal arguments to sustain an implausible status theory is obvious. The question for the Committee is, why are they doing this?

The answer is that the commonwealth party can not sustain its very existence and its espousal of commonwealth as a political status, unless it can convince the U.S. citizens of Puerto Rico, that a local power of consent to application of federal law, makes their lack of voting rights in national elections and voting representation in Congress, not only tolerable, but preferable to equal citizenship under statehood.

That is what is really going on here, and that is why the Task Force report so powerfully threatens the commonwealth party elite, and causes them to be so extreme and reactionary in condemning the report. Thus, the Governor of Puerto Rico has accused the Administration of threatening to end U.S. citizenship in Puerto Rico. Yet, no one has suggested a loss of U.S. citizenship in the future, except in the context of a vote by the residents of the territory favoring independence or associated republic status.

Scare tactics are all part of the reactionary politics of the commonwealth party today, They are all part of the illusory and deceptive agenda of that party. If I seem harsh, it is because the tactics being employed in commonwealth party response to the report are based on deception and outright lies.

The real problem underlying this issue is that the commonwealth party based its existence and its credibility with the people on a myth. It now must defend that myth, and to do that they must try to discredit the truth embodied in the Task Force report. The myth is that the language of “compact” in the 1950 federal statute authorizing a local constitution, means much more than it does.

The term “compact” was borrowed from early American territorial policy to add the color of solemnity to the procedure for adoption of a local constitution. Because it was not actually a Congressional compact in the full tradition of the Northwest Ordinance, it was qualified as being “in the nature of a compact”.

In any event, the real issue is what the alleged compact entailed. It was simply a commitment to a process through which a local constitution would be approved in Puerto Rico and submitted to Congress for its

approval. That is all, and at no point did the U.S. Congress agree that approval of the local constitution would make the local constitution unalterable, or that Puerto Rico had become a nation-state in permanent union with the U.S., subject to a local power of consent to application of federal law.

Indeed, at the time of its approval in 1952, Congress imposed amendments to the locally approved constitution that clarified the supremacy of federal law and limited amendments to the constitution. In addition, the U.S. Supreme Court and lower federal courts have upheld application of federal wiretap laws and death penalty laws that in effect amended the local constitution without local consent. The commonwealth myth has been dispelled time and time again and there is less reason than ever for Congress to consider it further.

Finally, it is my duty to inform the Committee and the public of an even more fundamental constitutional problem presented by the tactics of the commonwealth party in response to the Task Force report. I am referring to the support by the current Governor and his party leaders in the Legislative Assembly for H.R. 4963.

This bill purports to authorize a “constitutional convention” in Puerto Rico on the status issue. However, Article VII, Section 2, of the Constitution of the Commonwealth of Puerto Rico prescribes the exclusive procedure for a constitutional convention. A 2/3’s vote of the legislature and a majority approval by the voters in a referendum at the time of a general election are required to call a constitutional convention.

A federal law authorizing a constitutional convention that does not comply with Article VII would be a unilateral federal amendment of the local constitution. Yet, H.R. 4963 does not contemplate mutual consent to the amendment of the local constitution.

Since the Governor and his party leaders in the legislature took oaths of office to uphold the constitution of Puerto Rico, how can they support a federal bill that amends the local constitution and calls a constitutional convention in violation of Article VII?

They have staked their honor on the myth, that consent must be given to a federal law that amends the local constitution and the so-called compact it allegedly embodies. Yet they endorse a bill that violates their own theory of consent.

There is no bilateral compact. Commonwealth is undemocratic and Congress can unilaterally apply federal law to Puerto Rico. Thus, I oppose H.R. 4963 for the simple reason that Congress should not intervene in the local constitutional process without a compelling federal purpose, and there is no federal purpose underlying H.R. 4963.

Thus, I urge the Committee to reject H.R. 4963 and implement the Task Force report based on H.R. 4967.